Regulation 26-104.1(c)(I) Telephone, Telegraph and Mobile Telecommunications Services.

- (a) Prior to August 1, 2002, intrastate telephone and telegraph service is subject to the tax imposed by C.R.S. 39-26-106, whether furnished by public, private, mutual, cooperative, or governmental corporations or agencies. The term "service" includes but is not limited to additional listings, joint-user service, non-talking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, service connection charges, and any other charges assessed or passed on to the consumer with the exception of charges for installation or repair which are taxed according to the Special Regulation on Contractors. Telephone service is taxable whether either local or toll calls are made or telegrams are sent from telephone pay stations.
- (b) On or after August 1, 2002, all telephone and telegraph services except those services defined as mobile telecommunications services under 4 United States Code section 124(7) which are intrastate telephone or telegraph service are subject to the tax imposed by C.R.S. 39-26-106, whether furnished by public, private, mutual, cooperative, or governmental corporations or agencies. The term "service" includes but is not limited to additional listings, joint-user service, non-talking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, service connection charges, and any other charges assessed or passed on to the consumer with the exception of charges for installation or repair which are taxed according to the Special Regulation on Contractors. Telephone service is taxable whether either local or toll calls are made or telegrams are sent from telephone pay stations.
- (c) On or after August 1, 2002 all charges made for mobile telecommunications services as defined under 4 United States Code section 124(7), including "cellular" communications services shall be subject to the tax imposed by this section only if the service is provided to a customer whose place of primary use is within Colorado, or for local taxes, where a customer whose place of primary use is within the local jurisdiction imposing a local sales tax administered by the Department. Intrastate charges for service which originates and terminates within the same state of the United States are taxable, regardless of whether that state is Colorado. Charges for end-to-end interstate mobile telecommunication service of a customer whose place of primary use is within Colorado are not subject to state or state collected sales tax regardless of whether the call originates in Colorado or another state.

Determination of place of primary use is controlled by 4 United States Code (USC) section 122, as amended. On August 1, 2002 this section read:

§ 122. Determination of place of primary use

(a) PLACE OF PRIMARY USE.—A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use (as defined in section 124). Subject to section 121,

and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall—

- (1) allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer; and
- (2) not hold a home service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge.
- (b) ADDRESS UNDER EXISTING AGREEMENTS.—Except as provided in section 121, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect 2 years after the date of the enactment of the Mobile Telecommunications Sourcing Act as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

Terms used in this regulation are as defined under 4 USC section 124, as amended. On August 1, 2002 the applicable subsections read:

CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.—The term 'charges for mobile telecommunications services means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

- (7) MOBILE TELECOMMUNICATIONS SERVICE.—The term 'mobile telecommunications service' means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.
- (8) PLACE OF PRIMARY USE.—The term 'place of primary use' means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be —
- "(A) the residential street address or the primary business street address of the customer; and
- "(B) within the licensed service area of the home service provider.

Regulation 39- 26-104.1(d.1).

Gas or electric service furnished within the state of Colorado is subject to the tax imposed by C.R.S. 39-26-106, whether furnished by public, private, mutual, cooperative, or governmental corporations or enterprises for commercial use. The tax attaches to all amounts paid by the user or consumer for gas or electric service, whether or not there is actual consumption, and regardless of the manner in which the payment is made.

Steam whether furnished for commercial or industrial uses, by public, private, mutual, cooperative, or governmental corporations or enterprises, is subject to the tax imposed by C.R.S. 29-26-106, unless purchased for resale in its original form.

(See <u>Regulation 26-102.21</u> for certain limited exemptions.)

(See C.R.S. 39-26-114(1)(a)(XXI) for exemption on domestic consumption.)